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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 August 1996, at 3 p.m.

Chairman: Mr. EIDE

later: Mr. LINDGREN ALVES

later: Mr. EIDE

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The meeting was called to order at 3.05 p.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued) (E/CN.4/Sub.2/1996/10-12 and Corr.1, 13-15, 31-33; E/CN.4/Sub.2/1996/NGO/9 and 10; E/CN/4/Sub.2/1995/10, 11 and 13; CHR/Dec./1996/104)

1. Mrs. EL HAJJAJI (Observer for the Libyan Arab Jamahiriya) said that realization of the right to development required regional cooperation based on full respect for the relevant principles of international law as well as the existence of fair economic relations and a fair economic environment. The major economic Powers had a guiding role to play in that regard; yet the absence of an international commitment to development was the chief obstacle to implementation of the Declaration on the Right to Development.

2. The Lockerbie bombing had been used as a pretext to impose sanctions on the Libyan people, thereby contravening the principle of freedom of movement and the rights to food and health care, and resulting in many deaths and huge financial losses. Nevertheless, the Libyan people were determined to continue their efforts to achieve development, and rejected any attempt at hegemony.

3. The major Powers were now inventing new accusations to prevent the Libyan people from exercising the right to development, and were aiding an extremist militia hostile to the authorities. They claimed to have declared war on terrorism, and had enacted the D'Amato Law, which threatened to impose sanctions on foreign companies investing in the Libyan Arab Jamahiriya and the Islamic Republic of Iran. Terrorism was of course to be condemned - her country had been a victim of terrorism in 1986. Yet such a law did not combat terrorism: on the contrary, by turning attention to other matters, it abetted terrorism, and was also likely to trigger economic wars that might prejudice the industrialized countries' interests, since the effects of such legislation would spread beyond the borders of the countries directly affected. The opposition of the countries of the European Union, Canada and Japan to that law showed their refusal to allow a single Power to enact laws that had international application, and that might undermine the authority of international organizations such as the World Trade Organization. Such unilateral measures were not only a violation of the rules governing relations between States, but also a violation of the basic human rights of the people of her country. Her delegation thus wished to express its appreciation of the criticisms of that law voiced by some members.

4. Mr. BUI QUANG MINH (Observer for Viet Nam) said that on the eve of the twenty-first century humankind was enjoying the fruits of the contemporary scientific and technological revolution; yet paradoxically, hundreds of millions of people in developing countries were crushed by poverty and squalor. Most developing countries faced bleaker prospects, owing largely to an adverse economic environment: domestic economic malaise was seriously aggravated by external factors such as decreasing net inflows of resources and investment, unfavourable exchange and interest rates, falling commodity prices, unstable markets, an inequitable trading system, and the imposition of economic pressures and discrimination.

5. As profound technological and ecological changes and the globalization of production made themselves felt, there was a growing awareness that without substantial national and international efforts, the 1990s would be no more prosperous than the 1980s. It was true that primary responsibility for economic growth and development in the developing countries lay with the people and Governments of those countries. However, national commitments and efforts were simply not enough. The moral and practical responsibility for improving the international economic environment lay mainly with the developed countries. Developed industrial nations should rapidly terminate their policies of economic blockades and pressure, renounce unequal economic relations and create an international economic environment favourable to third world development. The United Nations should take a more active role in helping developing countries overcome their difficulties.

6. Like other developing countries, Viet Nam had engaged in reforms and adjustments appropriate to its specific national circumstances. Guided by its aim of foreign policy renewal, it was constantly aware of the need to promote regional cooperation, with a view to broadening cooperation with other countries in Asia and the Pacific, Western Europe and Scandinavia and promoting relations with the United States of America. In its strategy for socio-economic development to the year 2000, Viet Nam had set itself the objective of moving out of the crisis, stabilizing the socio-economic situation, striving to eliminate poverty and underdevelopment, improving living conditions, consolidating its defence and security and paving the way for more rapid development at the start of the twenty-first century. It was convinced that, with the cooperation of the international community, it would be able to achieve that objective.

7. Ms. HERNÁNDEZ QUESADA (Observer for Cuba) said that her delegation continued to be concerned at the persistence of attempts to set civil and political rights on a higher plane than economic, social and cultural rights. About 80 per cent of the world's population were experiencing a reduction of those rights to what was, at best, the right to survive. Domestic economic problems were exacerbated by the adverse external economic conditions imposed on developing countries by most of the industrialized countries.

8. Referring to paragraphs 70 to 72 of Mr. Guissé's second interim report on the question of the impunity of perpetrators of human rights violations (E/CN.4/Sub.2/1996/15), she said that her delegation had requested the Special Rapporteur to amend those paragraphs. In discussing embargoes or blockades, it was imperative to distinguish between measures imposed by the international community - albeit against opposition on the part of some States - and measures imposed unilaterally by developed Powers for political ends. Any study of that issue must clearly establish the responsibility of States that imposed such measures in defiance of international law and the agreements that had led to the setting up of the World Trade Organization.

9. Thirty-five years of uninterrupted and inhumane blockade of Cuba by the United States of America were apparently not sufficient to justify naming the party responsible. In its resolutions 47/19, 48/16, 49/9 and 50/10, the General Assembly had repeatedly stressed the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba. Yet the United States continued to disregard the decisions of

the most representative organ of the United Nations with total impunity, shamelessly imposing its imperialist and interventionist interests on the rest of the world. It had launched a veritable witch-hunt against firms prepared to supply Cuba with essential medical supplies. Its latest attempt to interfere in the sovereignty of third States, the Helms-Burton Law, sought to impose sanctions on citizens of third States trading with or investing in Cuba.

10. Was this the end of the cold war or the start of the hot war? One thing was sure: the Government and people of Cuba would continue to exercise their right to self-determination, and would not permit any Government or institution to interfere directly or indirectly in its internal affairs. It was committed to the creation of a just and egalitarian society, and would continue to develop a socialist democracy in which all its people enjoyed the full range of their human rights.

11. Mrs. PALALA (Observer for the Philippines) said that, in spite of the internal strife that had racked the Philippines since independence, progress was being made in the promotion of the civil and political, economic, social and cultural rights of all its citizens. The peace negotiations between the Philippine Government and the Moro National Liberation Front initiated in 1976 were due to be concluded in Jakarta the following month. The peace agreement would then be signed in Manila. The problems of Muslims in the southern Philippines had thus been settled without recourse to secession. Nevertheless, her Government would continue to rely on the support of all human rights advocates in ensuring that human rights were realized in the southern Philippines.

12. Mr. JOINET, referring to Mr. Bengoa's provisional report on the relationship between the enjoyment of human rights and income distribution (E/CN.4/Sub.2/1996/14), said that the criterion of equality of opportunity referred to in its paragraph 34 had the advantage of being readily comprehensible to the layman. Mr. Bengoa's assertion that the absence of equal opportunities led to manifest discrimination was important, for Equality had always been more difficult to achieve than Liberty and Fraternity. The egalitarianism fashionable in his youth had not stood the test of time: the market economy and deregulation meant increasingly that, under any system, might was right, with equality of opportunity suffering accordingly. Some regimes formerly committed to egalitarianism now seemed to have swung too far in the opposite direction.

13. As a logical consequence, in paragraph 37 of his report Mr. Bengoa went some way towards rehabilitating the role of the State, one of whose prime vocations was to ensure equality of opportunity, though not through paternalistic policies or hand-outs. One of the demands made by the strikers during the unrest in France the previous winter, to which Mr. Khalifa had referred, had been that human beings should be restored to their rightful place at the centre of the economy. How could that be achieved, other than through equality of opportunity?

14. Paragraph 40 of the report raised the question of unequal income distribution, a clear consequence of North/South geopolitical divisions and a legacy of colonialism. Unequal income distribution was glaringly apparent in

the industrialized countries, but seemed also to be an emerging problem in non-industrialized countries. That aspect of the issue merited further consideration.

15. Turning to Mr. Guissé's report (E/CN.4/Sub.2/1996/15), he said that there was a need for a fuller analysis of the question of embargoes. Embargoes were implicitly condemned in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights. All special rapporteurs had denounced their harmful effects. Moreover, paragraph 31 of the Vienna Declaration, which declared that "food should not be used as a tool for political pressure", should be cited on any report on the issue. Clearly, embargoes on provision of food and medical supplies had an extremely serious effect on populations. But where the aim of an embargo was to bring a nation's entire economy to a standstill, as in the case of the Helms-Burton Law targeting Cuba, the issues were far more serious; for ad hoc humanitarian relief could do nothing to offset the adverse consequences of such an embargo on the entire range of economic rights.

16. Mr. MINELIK ALEMU GETAHUN (Observer for Ethiopia), making a statement equivalent to a right of reply, said that, contrary to what had been said by the representative of the African Association of Education for Development, Dr. Taye Weldesmayat had not been arrested for political activities relating to education, but as a leader of an illegal and violent underground organization called the "Ethiopian National Patriots Front". Dr. Taye and his collaborators had conspired to commit robbery in order to augment its income and to assassinate senior government officials and prominent individuals, including foreigners (particularly United States citizens), but their conspiracy had been foiled and they had been arrested before they could carry out their terrorist activities. There was substantial and compelling evidence linking Dr. Taye to those activities. The six members of the clandestine organization had appeared before the Federal High Court on 6 August 1996, and a three-page charge had been filed by the Prosecutor General's Office. On the second day of the hearing, an application for bail had been turned down; the hearing had been adjourned until 14 October and the defendants transferred to Addis Ababa Central Prison.

17. As his delegation had explained on several occasions, the Government of Ethiopia had nothing to do with the internal disagreement among the leadership of the Confederation of Ethiopian Trade Unions. The step taken by the Government was fully consistent with the labour proclamation, and the case involving the Confederation and its leadership was currently before the court.

18. Mr. MUÑOZ-LEDO (Observer for Mexico), making a statement equivalent to a right of reply, said that he wished to set the facts straight following the claim by the International Law Project that thousands of indigenous people in rural areas of Mexico, identified by that organization as bases of the so-called Zapatista National Liberation Army, had been affected by Mexico's economic structural adjustment programme.

19. In recent years, Mexico had undertaken the far-reaching process of modernizing its economy and integrating it with the economies of other countries on the continent, with the overriding aim of promoting development and raising living standards. The fight against poverty had been central to

the modernization process, and 55 per cent of the Federal budget had been devoted to social development programmes, including education, health, food and training, even though the economic crisis had necessitated large public spending cuts.

20. Chiapas was the most deprived State in the Republic, and the Government had recognized the legitimate demands, which had given rise to the origin of the conflict. Two programmes had been set up to address the economic and social problems and promote development, for the most part funded from federal resources. The first, the Agreement on Social Development, was designed to improve rural road infrastructure and finance provisioning and production projects. The second, the Cañadas Programme, devoted two thirds of its budget to construction and one third to nutrition, education, health and production projects.

21. The presence of the Mexican army in Chiapas was necessary to guarantee the rule of law and the safety of the inhabitants, and had allowed almost 20,000 indigenous people displaced by the conflict to return home. The Act on Dialogue, Reconciliation and Honourable Peace in Chiapas enacted in March 1995 guaranteed freedom of movement and safety for the leaders of the Zapatista Army as long as negotiations continued.

22. In September 1995, the International Committee of the Red Cross had decided to withdraw from the region as its presence was no longer needed, transferring its assistance programmes to the Mexican Red Cross while continuing to offer logistical support to the dialogue between the Government and the Zapatista Army. The decision of the International Committee of the Red Cross confirmed the return to normality in the area and the desire of the two sides to seek a satisfactory solution through talks and peaceful means. In February 1996, the first agreements on Rights and Indigenous Culture were signed, the contents of which had been made known to the Commission on Human Rights at its fifty-second session.

23. Mr. EL-HAJJÉ said that poverty and income distribution were closely related political and social problems, as the history of revolutions and some of the victories over poverty showed. In order to overcome poverty, it was necessary to pay greater attention to its causes, one of which was the isolation of people in enclaves. He did not think it had been necessary for Mr. Despouy to go to such lengths to define poverty. It was self-evident that poverty in Europe was not the same as poverty in other parts of the world; surely, poverty was simply the lack of the means to live and play an active part in a community. He agreed with Mr. Bengoa that the central issue with regard to income distribution was equality of opportunity, though he had found the statistics in Mr. Bengoa's report (E/CN.4/Sub.2/1996/14) rather out of date and occasionally overwhelming. He said that the difficulty facing Mr. Guissé was the need to address the problem of impunity from the perspective of political and civil rights rather than the more customary legal standpoint.

24. Mr. GUISSÉ, Special Rapporteur on the question of the impunity of perpetrators of human rights violations, responding to comments and suggestions on his report (E/CN.4/Sub.2/1996/15), said that Mr. Khalifa's remark about changing its title deserved further consideration. He would pay

particular attention in his final report to the subtle difference between international crimes and crimes under international law; Mr. Chernichenko had been correct to point out that while some held that there was no place for the individual in international law, others were able to point to existing international instruments and the practice of institutions such as the European Commission on Human Rights and the Inter-American Commission on Human Rights to show that individuals were already appearing before international courts. He agreed with Mr. Ali Khan that a legal framework was needed to allow international economic crimes to be dealt with and to protect the rights of minorities. The suggestion by an NGO that a "code of conduct" for transnational corporations should be developed also merited closer examination. His final report would reflect the comments of several speakers on the disastrous humanitarian consequences of embargoes and economic sanctions, whether imposed by the international community or a single country, as the most vulnerable groups were inevitably the hardest hit.

25. Mr. BENGOA, Special Rapporteur on the relationship between the enjoyment of human rights in particularly economic, social and cultural rights, and income distribution, said he understood how difficult it was to reconcile the different viewpoints of human rights, the economy and the social sciences, but if no attempt was made to do that, social, economic and cultural rights would remain an abstract proposition with no bearing on the reality of economic decision-making. The dialogue begun with the international bodies concerned with economic matters had to be continued. He agreed with M. Joinet that equal opportunities were central to the implementation of social, economic and cultural rights, to break down the barriers of discrimination and remove the obstacles confronting the disadvantaged.

26. The question of equitable income distribution was generally addressed from an ideological standpoint, but he felt that it would be far more practical and useful to study the impact of globalization, deregulation and the removal of tariff barriers on income distribution, as suggested by Mr. Khalifa.

27. He agreed with Mr. Weissbrodt and others that much more work needed to be done on the relation between income distribution and the position of the most vulnerable members of society, such as women, indigenous peoples and minorities. It was an extremely difficult, but essential, task to find macroeconomic statistics on poverty disaggregated by gender, for instance, to determine with clarity the effects of income distribution on one of the most vulnerable groups.

28. He thought it was necessary to redefine the role of the State, not with a view to weakening it, as was the current fashion, but with a view to strengthening it; as the International Association Against Torture had pointed out, the fundamental role of the State was to prevent the fragmentation of society.

29. He said it was very important for governments and NGOs to continue supplying statistics so that he could develop indicators which would give a true picture of income distribution in their societies. In that connection, he made the point that, in international terms, statistics that were only two or three years old were considered recent.

30. He thought that a seminar to discuss at greater length all the issues raised during the debate would be a good idea, especially if it was tied in with the follow-up to the World Summit for Social Development held in Copenhagen.

31. Mr. DESPOUY, Special Rapporteur on human rights and extreme poverty, responding to comments on his final report (E/CN.4/Sub.2/1996/13), said that he had included a definition of extreme poverty (annex III) because the World Summit for Social Development had urged individual States to work on a definition in consultation with organizations familiar with situations of extreme poverty.

32. The quotation from a World Health Organization source in paragraph 37 should have been placed within inverted commas.

33. Referring to a statement by the representative of the International Monetary Fund (IMF) at the 23rd meeting, he said that he was aware of certain sensitivities and had taken the precaution of basing his argument in paragraph 93 on statements by the Fund itself on social issues. He regretted any misunderstanding because of the need to forge more harmonious links between human rights promoters and those who controlled a large proportion of the financial resources available for the purpose of integrated development.

34. With regard to his general policy proposal (paras. 220-231), he looked forward to the discussions that would take place in the Commission on Human Rights on machinery to deal with the human rights aspects of the Copenhagen Declaration and Programme of Action.

ELIMINATION OF RACIAL DISCRIMINATION:

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION (agenda item 5) (continued)

Joint meeting of the Bureaux of the Committee on the Elimination of Racial Discrimination and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (CERD/C/Misc.31/Rev.2)

35. The CHAIRMAN, reporting on the joint meeting of the officers of the Sub-Commission and the Committee on the Elimination of Racial Discrimination, said that some degree of consensus had been reached on two of the matters discussed.

36. The first concerned a suggestion by the Chairman of the Committee relating to the seminar on the role of the mass media in combating or disseminating racist ideas referred to in paragraph 10 of the Revised Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (General Assembly resolution 49/146, annex). His idea was to convene a meeting of editors, journalists and photographers, persons with practical experience in the media, rather than specialist commentators. The Chairman had prepared a draft letter from the United Nations High Commissioner for Human Rights to heads of major broadcasting corporations and newspapers

and to the International Press Institute. If the Sub-Commission agreed, the two Chairmen would first approach the High Commissioner informally to ascertain how he felt about the idea.

37. The second matter was a proposed working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination concerning education to combat racial prejudice and promote positive attitudes in multicultural societies. Two members of each body would be appointed to prepare the working paper.

38. In reply to a question by Mrs. Mbonu, he said that the idea of a joint meeting of the two bodies acting as a focal point for Third Decade activities had not been endorsed by the officers of the Sub-Commission since that role was to be played by the Centre for Human Rights.

39. Mrs. WARZAZI said that while she supported the practice of coordinating the work of the Sub-Commission and the Committee, she feared that the Committee had recently been inclined to exceed its terms of reference, in particular through its "early warning and urgent procedures". The Fifth Committee of the General Assembly had set aside funds to enable the Centre for Human Rights to act as focal point for the Third Decade. If the Sub-Commission and the Committee on the Elimination of Racial Discrimination wished to assist the Centre in its task, they could examine current and proposed activities with a view to evaluating progress and proposing ways of reducing existing obstacles to the implementation of the Programme of Action.

40. The CHAIRMAN said that he would report her suggestion to the officers of the Committee and would prepare a draft decision concerning the proposed working paper on article 7 of the Convention.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(b) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

(agenda item 10) (E/CN.4/Sub.2/1996 16, 17, 18 and 19; E/CN.4/Sub.2/1996/NGO/2, 4, 5, 11, 17, 26, 30 and 31)

41. Mr. DESPOUY, Special Rapporteur on human rights and states of emergency, introduced the ninth annual report and list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1996/19). The purpose of the list was to provide as complete a picture as possible of the number of States that had introduced emergency measures and to assess their impact on human rights. When he had first been appointed as Special Rapporteur in 1985, states of emergency had been associated with grave violations of human rights, especially in Latin America. The situation had evolved somewhat in the meantime. States of emergency were in many cases introduced for limited periods and the regulatory criteria

established under international law were observed. It was his task to report on any departures from those criteria, for example where states of emergency were extended indefinitely or where non-derogable human rights were not protected. Governments had begun to use his previous reports to the Sub-Commission as guidelines and some had asked for technical support in preparing their constitutions.

42. The report included his response to the Sub-Commission's request for a working paper on habeas corpus as a non-derogable right and as one of the requirements for the right to a fair trial. He drew attention to two landmark Advisory Opinions adopted by the Inter-American Court of Human Rights, which argued that habeas corpus, being essential for the protection of other non-derogable rights such as the rights to life and physical integrity, must itself be non-derogable (para. 17). The United Nations Human Rights Committee had stated that, in its experience, States parties generally understood that the right to habeas corpus should not be limited in situations of emergency (para. 17). It followed quite logically from the complementarity between the various norms of international law, particularly humanitarian and customary law, and human rights that such basic guarantees as habeas corpus were non-derogable. He therefore saw no reason for the preparation of a standard-setting instrument on the subject but thought that an opinion by the Human Rights Committee on article 4 of the International Covenant on Civil and Political Rights might serve the purpose of making the non-derogable status of the right of habeas corpus more explicit.

43. Mr. JOINET, Special Rapporteur on the question of the impunity of perpetrators of violations of human rights, introducing his final report (E/CN.4/Sub.2/1996/18), said that he had prepared the document as a manual for militant NGOs, for States with the political willpower to fight against impunity and for experts responsible for setting up bodies such as the Truth and Reconciliation Commission in South Africa engaged in consolidating a peace process or conducting extrajudicial inquiries.

44. He had wanted to submit a practical reference document. If it had any originality, that was due to a number of suggestions by NGOs.

45. He had divided the principles into three groups. The first was the right to know, which was also a collective right and included the duty to remember. For that purpose it was essential that the archives should be preserved correctly. The rules proposed for extrajudicial commissions of inquiry were the result of a comparative study made by the Secretariat with the aid of work done in universities. They represented the minimum requirements for making such commissions credible. There again, it was essential, especially in countries that had once formed part of the Soviet bloc, that the evidence should be safeguarded and also that a record should be kept of the behaviour of social actors such as trade unions. In all cases an inventory of the evidence must be made before it disappeared, the persons responsible for the archives must either be confirmed in their posts or replaced, and measures must be taken to prevent a black market in archives from developing.

46. Another important right was the right to justice, in which the victim was much more closely concerned. He must be in a position to vindicate his right to an equitable remedy, and the distribution of jurisdiction between national,

foreign and international courts should be clear. All the NGOs he had consulted were in favour of having a permanent international tribunal, but if such a tribunal was established under a convention, the instrument would be ratified only by those States which thought they would never be brought before it. An ad hoc tribunal created by the Security Council had the advantages of involving all members of the United Nations, but it was by its nature rather selective. Why have a tribunal on Rwanda, for example, and not on Chechnya? The ideal situation would be to have a universal tribunal that was not created by the Security Council or pursuant to some convention.

47. Another important but rather technical point related to the wrongful use of restrictions such as prescription, amnesties, asylum, extradition, the exclusion of in absentia procedures, and due obedience. Realistic reconciliations had to be made in some circumstances, but before a page was turned over it was necessary to read it. The irremovability of judges also posed problems when there was a change of system and the sitting judges were the same judges who had protected the former system and would have the responsibility of trying their former allies. In such circumstances the judges should be retained if they had been appointed in conformity with the Constitution, but when an authoritarian regime had installed judges under non-constitutional procedures, it should be possible to remove them.

48. There was a close relationship between military courts and impunity. If military courts could not be abolished, they should be empowered to try only offences against military law. In any case, crimes against humanity could hardly be tried in a military court.

49. The right to reparation included measures of restitution, compensation and rehabilitation. There were also certain measures of a general scope which posed problems. In France, for example, the President of the Republic had only recently recognized the responsibility of the French State under the Vichy regime. Official rehabilitation, in its many forms, was very important for a victim's honour. If the perpetrator of violations was insolvent, the State would probably have to pay. Among the guarantees of non-repetition, the disbandment of armed groups was a particularly difficult matter because the remedy could sometimes be worse than the problem. However, no effective campaign could be waged against impunity unless it was seriously tackled.

50. A problem to which he had not been able to find a solution was the situation in which a judicial system lacked the necessary resources to cope with all cases of violations because there were too many people to be tried, as in Rwanda, or to be heard, as in Ethiopia. Thus it was unlikely that an international tribunal would be able to try all the persons that ought to be brought before it.

51. The set of principles in Annex II should be considered at greater length. The ideal solution would be for the report to be adopted as a final version as soon as possible, but further to suggestions made by NGOs he had already introduced around 25 amendments to the existing text which it had not yet been possible to reproduce for financial reasons. He therefore suggested that the revised principles should be sent out to members in January or February 1997 and should then be thoroughly considered at the Sub-Commission's forty-ninth session.

52. The CHAIRMAN observed that, given the time constraints, it would probably be a good idea to wait until the next session to adopt the set of principles.

53. Mr. YIMER said that although he had a considerable number of questions to ask regarding the Special Rapporteur's very important report, he considered it would be wise to postpone the adoption of the principles until next year. He pointed out that the term "extrajudicial commission of inquiry" used in the report had some rather unpleasant connotations and suggested that it should be changed to "non-judicial commission of inquiry".

54. Mrs. WARZAZI suggested that if the adoption of the set of principles was to be postponed until next year, the debate on the report should also be postponed until then.

55. It was so agreed.

56. Mr. FIX ZAMUDIO gave the Sub-Commission some information regarding the experience of the Inter-American Court of Human Rights with regard to the protection of human rights in emergencies and the right to reparation when human rights had been violated. Unfortunately, states of emergency were all too frequent, even under democratic regimes. Advisory Opinion No. 8 of 30 January 1987 established that the rights of amparo and habeas corpus could not be suspended during states of emergency, while Advisory Opinion No. 9 of 6 October 1987 had gone even further and extended the protection also to any other effective remedy before the courts and to judicial procedures necessary for the maintenance of the non-derogable rights provided for in municipal law. Thus the non-derogable status of rights such as amparo and habeas corpus was extended to similar rights such as the Brazilian mandado de segurança, the Chilean recurso de protección and the Colombian acción de tutela. It was worth noting that the United Nations Human Rights Committee had held that even under states of emergency any statement or confession obtained by torture or ill-treatment could not be used as evidence and that any person detained under them must have access to the services of a lawyer.

57. The Inter-American Court of Human Rights had heard two very significant cases relating to the right to reparation. In a case involving forced disappearances in Honduras it had not only provided that a sum should be paid immediately to the widows but also that a further sum should be deposited in a bank to cover the maintenance and education of the children and, controversially, it had increased the amount payable in order to offset a severe surge of inflation. Another case had concerned the killing by the Suriname army of jungle tribespeople wrongly identified as guerrillas. In view of the victims' unusual way of life, a special procedure had had to be instituted. The Court had ordered the payment of compensation in hard currency for the benefit of the victims and also of the tribe as a whole, which it considered to have been wronged collectively, as well as the reopening of a medical post and a school. Those two cases illustrated the progressive development of judicial protection and reparations to victims in the case-law of the Inter-American Court of Human Rights.

The meeting rose at 6 p.m.